



DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 313, 320, and 500

[Docket No. FSIS-2016-0004]

**Inhumane Handling of Livestock in Connection with
Slaughter by Persons Not Employed by the Official Establishment**

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final determination and opportunity for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS), is announcing its intent to hold livestock owners, transporters, haulers and other persons not employed by an official establishment responsible if they commit acts involving inhumane handling of livestock in connection with slaughter when on the premises of an official establishment. The Agency intends to initiate civil or criminal action, in appropriate circumstances, against individuals not employed by an official establishment, if these individuals handle livestock inhumanely in connection with slaughter when on the official premises. FSIS believes these actions will further improve the welfare of livestock handled in connection with slaughter by ensuring that all persons that inhumanely handle livestock in connection with slaughter are held accountable.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. FSIS will implement the actions discussed in this document on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER], unless FSIS receives comments that demonstrate a need to revise this date. FSIS will publish a Federal Register document affirming the implementation date.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov/>. Follow the on-line instructions at that site for submitting comments.

Mail, including CD-ROMs, etc.: Send to Docket Room Manager, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 14000 Independence Avenue SW., Mailstop 3782, Room 8-163B, Washington. DC 20250-3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8-163B. Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2016-

0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street SW., Room 8-164, Washington, DC 20250-3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202)205-0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), which establishes requirements for the premises, facilities, and operations of official establishments that slaughter livestock and prepare meat and meat products for human food to ensure both the safety of meat and the humane slaughter and handling of livestock. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection under the FMIA (21 U.S.C.

603(b)). The Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 et seq.) requires that the slaughter of livestock and the handling of livestock in connection with slaughter be carried out only by humane methods (7 U.S.C. 1901). Therefore, FSIS requires official establishments to humanely handle livestock that are on the official premises, on vehicles that are on the official premises, and on vehicles in queue for slaughter establishments. Once a vehicle carrying livestock enters, or is in line to enter, an official establishment's premises, the vehicle is considered to be part of that official establishment's premises (see FSIS Directive 6900.2).

With respect to enforcement action at the establishment, the FMIA and implementing regulations provide that FSIS may suspend inspection services from an official establishment for inhumane slaughter or inhumane handling in connection with slaughter (21 U.S.C. 603(b); 9 CFR part 500). The FMIA (21 U.S.C. 610) provides that no person, establishment, or corporation shall slaughter or handle in connection with slaughter any livestock in any manner not in accordance with the HMSA (21 U.S.C. 610(b)). The FMIA also provides for the issuance of warning letters and for initiation of criminal and civil action for violations (21 U.S.C. 674 and 676).

Livestock transporters or haulers transport animals to slaughter establishments. Many of these individuals are not employed by the establishment and thus are not required to follow instructions from the establishment on the handling of livestock in connection with slaughter.

Unlike owners of Federal establishments, non-employees, such as livestock transporters, generally do not hold a grant of Federal inspection and therefore are not subject to FSIS administrative enforcement actions. When non-employee transporters inhumane handle livestock on the premises of an official establishment, FSIS takes action against the establishment (see FSIS Directive 6900.2). For purposes of this document, livestock transporters, haulers, or other persons not employed by an official establishment that handle livestock in connection with slaughter are collectively referred to as "non-employee transporters", or simply "non-employees."

On January 21, 2015, FSIS received a petition from an attorney on behalf of an official swine slaughter establishment requesting that FSIS review its humane handling enforcement policy (available on the FSIS Web page at <http://www.fsis.usda.gov/wps/wcm/connect/4d9160de-a7a1-4fd9-88ff-e3b24bf8d1e9/15-03-Non-Employee-Humane-Handling.pdf?MOD=AJPERES>). The petition stated that official

establishments should not be held accountable when non-employees inhumanely handle livestock on the official establishment premises. FSIS has decided to grant the petition and is publishing this document to describe the actions that the Agency will take when non-employee transporters inhumanely handle livestock on the premises of an official establishment.

Non-Employee Violations

FSIS intends to hold non-employees accountable for their actions if they inhumanely handle livestock in connection with slaughter when on the premises of an official establishment.

When FSIS's Office of Field Operations (OFO) inspection program personnel (IPP) observe a non-employee inhumanely handling livestock in connection with slaughter, FSIS will instruct them to produce a written record of the event and forward the record to their District Office. The District Office will refer the record, when appropriate, to FSIS's Office of Investigation, Enforcement and Audit (OIEA) to conduct follow-up investigations and enforcement action. As discussed below, FSIS intends to update its livestock handling instructions to OFO and OIEA personnel to reflect the actions described in this document. These instructions will include a description of the type of information that IPP are to include in their written records of the event. In accordance with FSIS Directive 8010.5

Case Referral and Disposition, OIEA personnel will evaluate the case for determination of action, including warning letters for minor violations, civil action for repetitive violations, and criminal prosecution for egregious violations (21 U.S.C. 674 and 676).

The actions that FSIS is announcing in this document are intended to enhance the Agency's ability to ensure the humane handling of livestock in connection with slaughter and do not replace existing enforcement policies. FSIS will continue to use its administrative authority to take action against the establishment when establishment employees are found responsible for inhumane handling of livestock. FSIS will consider the involvement of non-employees in incidents of inhumane handling while on establishment premises to assess the appropriate administrative enforcement actions, if any, that the Agency will take against the establishment. The following examples illustrate how FSIS intends to implement this policy.

If FSIS determines that a non-employee is solely responsible for a humane handling violation, FSIS will use its authority to initiate action solely against the non-employee and will not take administrative enforcement action against the establishment. For example, if OFO personnel observe a non-employee driving animals too fast and causing a few to slip and fall, and establishment employees are not involved in the event,

FSIS will initiate action against the non-employee and will not take an administrative enforcement action against the establishment.

If FSIS determines that a non-employee and an establishment employee both are engaged in a humane handling violation, FSIS will use its authority to initiate action against the non-employee and to take a regulatory control action or administrative enforcement action, as appropriate, against the establishment. For example, if OFO personnel observe a non-employee transporter and an establishment employee driving animals too fast, FSIS will initiate an action against the non-employee and take a separate regulatory or administrative enforcement action against the establishment.

OFO personnel will take a regulatory control action when it is necessary for FSIS to stop the inhumane treatment of livestock because the violation continues to injure, cause distress, or otherwise adversely affects livestock, or to immediately stop inhumane handling that is egregious, regardless of whether a non-employee or an establishment employee is responsible for the inhumane handling (9 CFR 500.2(a)(4), 9 CFR 313.50). After taking a regulatory control action, OFO personnel will meet with establishment management and assess the event to determine whether a non-employee, an establishment employee, or

both committed the humane handling violation. For example, if OFO personnel observe the excessive beating of livestock during unloading, FSIS personnel may apply a tag to the unloading chute to prevent further inhumane handling. FSIS personnel would meet with establishment management and make a determination as to whether the persons responsible for the inhumane handling were non-employees or were employed by the establishment. If a non-employee is found to be solely responsible for the inhumane handling violation, OFO personnel would not take regulatory or administrative enforcement actions against the establishment. OFO personnel would remove the tag after the establishment proffers preventive measures that ensure compliance with the appropriate provisions of 9 CFR part 313.

If OFO personnel determine that a non-employee inhumanely handled livestock on the premises of an official slaughter establishment, FSIS expects that establishment management will provide, upon request, certain records that are required to be maintained under 9 CFR part 320. These records include, among others, the name and address of the seller of the livestock, the method of shipment, the date of shipment, and the name and address of the carrier (9 CFR 320.1(b)(1)). If establishment management does not provide the information upon request, FSIS may obtain a subpoena to gain access to the non-employee information required under 9 CFR 320.1.

Implementation and request for comments

FSIS requests comments on its decision to initiate enforcement actions against non-employees that inhumanely handle livestock in connection with slaughter while on the premises of an official establishment. FSIS will make changes to its implementation plans as necessary in response to the comments received. The Agency also will update its livestock handling instructions to OFO and OIEA personnel and its humane handling guidance materials to reflect the actions described in this document. FSIS will begin implementing the policy discussed in this action 90 days after its publication in the Federal Register, unless FSIS receives comments that demonstrate a need to revise this plan. The Agency will announce the availability of its updated humane handling guidance materials in a separate Federal Register notice. Additionally, FSIS will perform outreach to industry to educate slaughter establishments as well as animal transporters, haulers, and allied industries.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status,

family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this Federal Register publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS will also make copies of this Federal Register publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders.

The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>.

Options range from recalls to export information to regulations,

directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Dated: October 6, 2016.

Alfred V. Almanza,
Acting Administrator.

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